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September 13, 2022

VIA ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

RE: *Trustees of the New York City District Council of Carpenters
Pension Fund, et al., v. Petta Contracting, Inc., Case no. 22 CV 7268 (AT)*

Dear Judge Torres:

This firm represents the Petitioners in the above-referenced action. We write in connection with the Court's August 29, 2022 Order ("Order") which, *inter alia*, required that personal service of the pleadings be made upon the Respondent, which is a New York corporation.

Petitioners learned today that their process server had failed to properly serve Respondent. For the reasons set forth below, Petitioners request a six-week extension of time through October 25, 2022 to personally serve the Respondent pursuant to the Order and N.Y. C.P.L.R. § 311. Petitioners also respectfully request a corresponding extension of time of the briefing schedule set forth in the Order, in order to ensure that the pleadings are served in accordance with the Order prior to commencement of the summary judgment process. This is the first such request for an extension of time to personally serve Respondent, and the first such corresponding request for an extension of the related filing deadlines.

In accordance with the Order, Petitioners arranged on September 1, 2022 for the petition and Order to be personally served upon Respondent. Petitioners' process server, per the affidavit of service provided, attempted on three occasions to serve the Respondent personally at the last known residence of the owner of the corporate Respondent. When these attempts were not successful, the process server used a substitute service method. Petitioners received the affidavit from the process server today, September 13, 2022, thus learning that "nail-and-mail" service (*see* N.Y. C.P.L.R. § 308 (4)) had been effected on September 12, 2022. A copy of the affidavit of service is annexed hereto for reference purposes as Exhibit 1. Petitioners acknowledge that the case law in New York makes clear that a corporation cannot be served via "nail-and-mail." *See*,



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e.g., Lakeside Concrete Corp. v. Pine Hollow Bldg. Corp., 479 NYS2d 256 (2d. Dept. 1984), *aff'd* 65 NY2d 865 (N.Y. 1985); *see also Gabr Int'l Trading Corp. v. Birdsall*, 2009 U.S. Dist. LEXIS 129814, at *2 (E.D.N.Y. Feb. 12, 2009) (*report and recommendation adopted* at 2009 U.S. Dist. LEXIS 125507). Accordingly, the affidavit of service received from the process server today is invalid. *See* Ex. 1.

Given the foregoing facts, Petitioners respectfully request a six-week extension of time to properly serve Respondent personally with the papers in this action, with a corresponding six-week extension of the deadlines in the Order, in order to ensure that Respondent is personally served before starting the clock on its time to oppose confirmation of the arbitration award. The current and proposed deadlines are set forth below, with the deadlines from the Order struck through for clarity.

Deadline, pursuant to the August 29, 2022 Order	Current Date	Proposed Date
Petitioner to personally serve Respondent with the Petition and Order	September 12, 2022	October 25, 2022
Petitioner to file proof of personal service	September 19, 2022	November 1, 2022
Petitioner to file Rule 56.1 Statement and additional supporting documents	September 19, 2022	November 1, 2022
Respondent to file opposition, if any	October 3, 2022	November 15, 2022
Petitioner to file reply, if any	October 17, 2022	November 29, 2022

We thank the Court for its time and attention to this matter.

Very truly yours,

/s/ Charles Virginia
Charles Virginia, Esq.

GRANTED.

SO ORDERED.

Dated: September 14, 2022
New York, New York

ANALISA TORRES
United States District Judge